

REMARKS

Claim Status

Claims 1-4, 6-12 and 14-17 are pending in the present application. No additional claims fee is believed to be due. Claims 5 and 13 are canceled without prejudice.

Claims 8 and 12 have been amended to address the Examiners objection.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §112, Second Paragraph

The Examiner has rejected Claims 3, 5, 8 and 12 under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Additionally, The Examiner rejects each and every term used to describe the components of the present invention. Applicants respectfully traverse this rejection based on the remarks contained herein.

In *Texas Instruments Inc. v. U.S. Int'l Trade Comm'n*, 871 F.2d 1054, 10 USPQ2d 1257 (Fed. Cir. 1989), the Court held that “the public is entitled to know the scope of the claims but must look to both the patent specification and the prosecution history...”. Additionally, in *North American Vaccine, Inc v. American Cyanamid Co.*, 7 F.3d 1571, 28 USPQ2d 1333 (Fed. Cir. 1993, cert. denied, 511 U.S. 1069 (1994)), the Court stated that “Whether a claim is invalid for indefiniteness depends on whether those skilled in the art would understand the scope of the claim when the claim is read in light of the specification.”.

Applicant respectfully submits that each term objected to is fully defined, described and exemplified in the present specification. Most of the terms referred to are also commonly used terms in the art and would be readily understood by one of ordinary skill. It is not required of Applicant to redefine in the claim each term when it is sufficiently defined in the specification as in the present case.

Specifically, the Examiner states that the term “antihistamines” and “non-sedating antihistamines” in Claims 3 and 12 recite the broader limitation of “antihistamines”, and the claims also recite “non-sedating antihistamines” which is the narrower statement of the range/limitation. Applicants respectfully traverse this rejection based on the remarks contained herein. Applicants respectfully submit that the term objected to is fully defined, described and exemplified in the present specification. On page 5, lines 14-22, Applicants provide nonlimiting examples of “antihistamines” and “non-sedating antihistamines”. These are different pharmaceutical actives and are clearly separate classes of actives.

Applicants have amended Claims 8 and 15 to address the objection of the Examiner and respectfully requests that the objection be withdrawn.

Rejection Under 35 USC §103(a) Over Dobroksi et al. (US Pre-Grant Publication No. 2003/013377) and white (WO 94/25008) in further of Kennedy (The Thinking Person’s Guide to Perfect Health: Chelation)

Claims 1-4, 6-12 and 15-17 have been rejected under 35 USC §103(a) as being unpatentable over Dobroksi et al. (US Pre-Grant Publication No. 2003/013377) and White (WO 94/25008) in further of Kennedy (The Thinking Person’s Guide to Perfect Health: Chelation). This rejection is traversed because Dobroksi et al. is not available as prior art against the present application under 35 USC §103(c).

Dobroksi et al. published on June 19, 2003. The present application has a priority date of May 6, 2004. This means Dobroksi et al. only qualifies as prior art under 35 USC §102(e). Furthermore, the present application and Dobroksi et al. were, at the time the claimed invention was made, owned by, or subject to an obligation of assignment to, The Procter & Gamble Company.

Therefore, since the current application has a filing date after November 29, 1999 (the effective date of 35 USC §103(c)), It is contended that Dobroksi et al. is not available as a reference under 35 USC §103(c).

White and/or Kennedy together or by themselves does not make obvious the currently claimed invention. Accordingly, Claims 1-4, 6-12 and 15-17 are novel and nonobvious over the art of record. Reconsideration and withdrawal of the rejection on this basis are requested.

Conclusion

In light of the remarks and amendments presented herein, Applicants respectfully submit Claims 1-4, 6-12 and 15-17 are allowable over the cited reference. Reconsideration and allowance are respectfully requested. In the event that issues remain prior to allowance of the noted claims, then the Examiner is invited to call Applicant's undersigned attorney for further discussion.

Respectfully submitted,

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